IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.562 OF 2004

In the matter of
Companies Act, 1956

Tata Sons Ltd. .. Petitioner

Vs.

Gomti Credit and Finance P.ltd. .. Respondent

W I T H

COMPANY PETITION NO.563 OF 2004

In the matter of
Companies Act, 1956

Tata Consultancy Services Ltd. .. Petitioner

Vs.

Gomti Capital Markets (India) Ltd.. Respondent

CORAM: S.U.KAMDAR, J
DATE : 15TH APRIL 2005

P.C.:

1. These two company petitions are raising identical ground of refund of security deposit amount given by the petitioner to respondent for use of premises being 1st Floor of Building known as "Ram House" situated at Gaiwadi Industrial

Estate, S.V.Road, Goregaon (West), Mumbai 400062. The premises was given on leave and license agreement. Both are subject matter of the present Company Petition. The total amount of Rs.21,60,000/- were given as deposit by petitioner to respondent company. It is an admitted position that the said premises were vacated by the petitioner and respondents have not refunded the aforesaid security deposit.

2. Respondent company has resisted the aforesaid claim interalia on the ground that under the clause 4B of the Leave and License agreement it was liability of the company to make payment of the enhanced municipal taxes which would be payable by virtue of the present Leave & Licence agreement executed by and between the parties. Clause 4B reads as under:

> "4(b). The Licensee shall not be liable in any event to pay any existing rates, taxes assessments and outgoings whatsoever now or at any time hereafter relating to the licensed premises which are being levied b the Government or Bombay Municipal Corporation or any other public body or authority. It is clarified that any enhancement in the Municipal taxes in pursuance of this agreement of Leave &

> Licence, difference in tax shall be borne by the licensee proportionate to the area occupied, in addition to the monthly compensation hereby agreed to be paid."

3. In an affidavit in reply filed by respondent company it is an admitted position that towards the said liability of the enhanced Municipal Taxes the petitioner is only liable to make balance payment of amount of municipal taxes of Rs.4,75,046.35. However, the respondent company has resisted to refund the entire amount of Rs.21.0 lacs interalia on the alleged ground that there was a user by the petitioner of the Ground Floor premises which also respondent company is entitled to compensate. This so-called user is sought to spelt out on the oral arrangement. I do not find any substance in so far as such oral arrangement is not to be claimed by the respondent company. In view of the fact that there is an defence to the extent of the amount of Rs.4,75,046.35 I pass the following order:

4. That the company to deposit in this court a sum of Rs.16.0 lacs within 4 weeks from today. Failing which Company Petition to stand admitted

and made returnable on 23.9.2005. The petitioner to deposit with the Prothonotary and Senior Master a sum of Rs. 2000/- within a period of one week from today. The admission of the petition to be advertised in two newspapers namely, Free Press Journal and Navshakti and Government Gazette. Provisional Liquidator to stand appointed.

5. In an event if the said amount of Rs.16.0 lacs is deposited then the petitioner to file a suit within 4 weeks from the date of communication of such deposit by the Advocate of the Respondent company to the petitioner. If such a suit is filed the amount of Rs.16.0 lacs to stand transferred to the credit of the suit. The said amount will be invested in Fixed Deposit initially for a period of 3 years and the same will be renewed from time to time thereafter. However, it is made clear that the petitioner will be entitled to withdrawal of the said amount with liberty to take out appropriate application for withdrawal of the said amount in the said suit which court will decide on its own merits and pass necessary orders in respect thereof.

6. If an amount is deposited and suit is not filed within the aforesaid period of time in that event respondent company will be entitled to withdraw the said amount deposited by them in this court. Petition disposed of accordingly. No order as to costs.